



ENTERED
10/02/2009

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	
	§	Chapter 11
PS AMERICA, INC.,	§	
	§	Case No. 09-37209 (MI)
Debtor.	§	

**ORDER AUTHORIZING THE DEBTOR TO PAY THE
PREPETITION CLAIMS OF SHIPPERS**

[Relates to Docket No. 10]

The Court has considered the *Debtors' Emergency Motion for Entry of an Order Authorizing the Payment of Prepetition Claims of Shippers* (the "Motion")¹ filed by the above-referenced Debtor (the "Debtor"). The Court finds that (a) it has jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. § 1334(b), (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), (c) the relief requested in the Motion is in the best interests of the Debtor and its estate, creditors, and equity security holders, (d) proper and adequate notice of the Motion and hearing thereon has been given and that no other or further notice is necessary, (e) the relief granted herein is necessary to avoid immediate and irreparable harm to this estate; and (f) good and sufficient cause exists for granting the relief requested in the Motion, after due deliberation upon the Motion and all proceedings before the Court in connection with the Motion. Therefore, it is

ORDERED that the Motion is **GRANTED**. It is further

ORDERED that the Debtor is authorized, in its discretion and in the ordinary course of business, to pay the Shipping Claims associated with the cost incurred in connection with goods

¹ Capitalized terms shall have the meanings ascribed to them in the Motion.

or other materials in the Shippers' possession as of the Petition Date, in an amount not to exceed \$ 20,000 in the aggregate, without further order of the Court. It is further

ORDERED that as a condition to resolving any payment pursuant to this Order, the Shipper shall be deemed to have waived and released any previously asserted Statutory Lien, or any other lien on the assets of the Debtor. It is further

ORDERED that the Debtor, in its discretion, shall undertake appropriate efforts to cause the Shippers to acknowledge in writing that payment of their prepetition claims is conditioned upon the applicable Shipper continuing to supply goods and services to the Debtor on trade terms that, at a minimum, such Shipper generally provided to the Debtor prior to the Petition Date, or such other trade practices and programs that are at least as favorable to the Debtor as those in effect prior to the Petition Date, and the Debtor reserves the right to negotiate more favorable trade terms with any Shipper as a condition to payment of any such prepetition claim. It is further

ORDERED that the Debtor is not authorized to pay any Shipper any amount owed to by Shipper for goods released by the Shipper prepetition. It is further

ORDERED that nothing herein shall impair the Debtor's ability to contest, in its discretion, the validity and amounts of the Shipping Claims. It is further

ORDERED that all applicable banks and other financial institutions are hereby authorized to receive, process, honor, and pay any and all checks and transfer requests evidencing amounts paid by the Debtor under this Order whether presented prior to or after the Petition Date. Such banks and financial institutions are authorized to rely on the representations of the Debtor as to which checks are issued or authorized to be paid pursuant to this Order. It is further

ORDERED that Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained herein shall constitute, nor is intended to constitute, the assumption or adoption of any contract or agreement under section 365 of the Bankruptcy Code. It is further

ORDERED that notwithstanding Bankruptcy Rule 6004(h), 7062, or 9014, the terms and conditions of this Order shall be immediately effective upon its entry. It is further

ORDERED that the Debtor is authorized and empowered to take all actions necessary to implement the relief granted in this Order; and it is further

ORDERED that this Court shall retain jurisdiction to hear and consider all disputes arising out of the interpretation or implementation of this Order.

Dated: 10/2, 2009


UNITED STATES BANKRUPTCY JUDGE